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2 THE HONORABLE RICHARD A. JONES  
3  
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5

6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 DIGITAL MENTOR, INC., a Delaware  
corporation,

10 Plaintiff,

11 v.

12 OVIVO USA, LLC, a Delaware corporation;  
13 OVIVO US HOLDING INC., a Delaware  
corporation; VALERE MORISSETTE, an  
14 individual; and DOES 1 to 20,

15 Defendants.

Case No. 2:17-CV-01935-RAJ

**STIPULATED PROTECTIVE  
ORDER AND [PROPOSED]  
ORDER**

16 1. PURPOSES AND LIMITATIONS:

17 Discovery in this action is likely to involve production of confidential, proprietary, or private  
18 information for which special protection may be warranted. Accordingly, the parties hereby  
19 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
20 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
21 protection on all disclosures or responses to discovery, the protection it affords from public  
22 disclosure and use extends only to the limited information or items that are entitled to confidential  
23 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
24 confidential information under seal.  
25

26 Stipulated Protective Order - 1  
Case No. 2:17-cv-01935-RAJ

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1  
2 2. “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
3 MATERIAL:

4 2.1 “Confidential” material shall include documents and tangible things produced or otherwise  
5 exchanged, or any portion thereof, which a Party reasonably believes is or contains confidential or  
6 proprietary business, commercial, research, personnel, process, product, or financial information  
7 of the producing Party that does not fall within the CONFIDENTIAL – ATTORNEYS’ EYES  
8 ONLY designation (described below), and the disclosure of which to persons not qualified under  
9 this Order the producing Party reasonably and in good faith believes would likely cause harm. A  
10 designation by a Party of confidential material shall constitute a representation to the Court that  
11 such a Party believes in good faith that the information constitutes CONFIDENTIAL material.  
12 The Parties shall make a good faith effort to designate information only as needed. A Party  
13 designating information as CONFIDENTIAL shall mark each page of the Document containing  
14 such material as “CONFIDENTIAL.”  
15

16 2.2 “Confidential – Attorneys’ Eyes Only” material shall include the following documents  
17 and tangible things produced or otherwise exchanged, and/or portions thereof: (1) sensitive  
18 technical information, including current research, development and manufacturing information;  
19 (2) sensitive business information, including highly sensitive financial or marketing information;  
20 (3) competitive technical information, including technical analyses or comparisons of competitor’s  
21 products or services; (4) competitive business information, including non-public financial and  
22 marketing analyses, media scheduling, comparisons of competitor’s products or services, and  
23 strategic product/service expansion plans; (5) personal health or medical information; (6) credit,  
24  
25

1 banking or other financial information; or (7) negotiation strategies and proposals; (8) commercial  
2 agreements between Ovivo USA and other entities; (9) customer lists and information; (10)  
3 proprietary software or systems; (11) proprietary edits or customizations to software (12)  
4 proprietary process and product information; (13) personnel files; or (14) any other commercially  
5 sensitive information (including without limitation information or data relating to strategic plans,  
6 data received from a non-party pursuant to a non-disclosure agreement, commercial agreements,  
7 settlement negotiations, and settlement agreements) the disclosure of which to non-qualified  
8 persons subject to this Order the Producing Party reasonably and in good faith believes would  
9 likely cause harm.  
10

11 3. SCOPE

12 The protections conferred by this agreement cover not only confidential material (as  
13 defined above), but also (1) any information copied or extracted from confidential material; (2) all  
14 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
15 conversations, or presentations by parties or their counsel that might reveal confidential material.

16 However, the protections conferred by this agreement do not cover information that is in  
17 the public domain or becomes part of the public domain through trial or otherwise.

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

19 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
20 or produced by another party or by a non-party in connection with this case only for prosecuting,  
21 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the  
22 categories of persons and under the conditions described in this agreement. Confidential material  
23 must be stored and maintained by a receiving party at a location and in a secure manner that ensures  
24 that access is limited to the persons authorized under this agreement.

1           4.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the designating party, a receiving party may disclose any  
3 confidential material only to:

4                   (a)    the receiving party’s counsel of record in this action, as well as employees  
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6                   (b)    the officers, directors, and employees (including in house counsel) of the  
7 receiving party to whom disclosure is reasonably necessary for this litigation and who have signed  
8 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless the document or material  
9 produced is for Attorney’s Eyes Only and is so designated;

10                  (c)    experts and consultants to whom disclosure is reasonably necessary for this  
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12                  (d)    the court, court personnel, and court reporters and their staff;

13                  (e)    copy or imaging services retained by counsel to assist in the duplication of  
14 confidential material, provided that counsel for the party retaining the copy or imaging service  
15 instructs the service not to disclose any confidential material to third parties and to immediately  
16 return all originals and copies of any confidential material;

17                  (f)    during their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
19 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
20 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
21 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
22 under this agreement;

23                  (g)    the author or recipient of a document containing the information or a  
24 custodian or other person who otherwise possessed or knew the information.

1           4.3     Disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
2 Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a

3 receiving party may disclose any highly confidential material only to:

4                   (a)     the receiving party’s counsel of record in this action, as well as employees  
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6                   (b)     experts and consultants to whom disclosure is reasonably necessary for this  
7 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8                   (c)     the court, court personnel, and court reporters and their staff;

9                   (d)     copy or imaging services retained by counsel to assist in the duplication of  
10 confidential material, provided that counsel for the party retaining the copy or imaging service  
11 instructs the service not to disclose any confidential material to third parties and to immediately  
12 return all originals and copies of any confidential material;

13                   (e)     during their depositions, witnesses in the action to whom disclosure is reasonably  
14 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
15 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed  
16 deposition testimony or exhibits to depositions that reveal confidential material must be separately  
17 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
18 agreement;

19                   (f)     the author or recipient of a document containing the information or a custodian or  
20 other person who otherwise possessed or knew the information.

21           4.3     Filing Confidential and Confidential-Attorneys’ Eyes Only Material. Before filing  
22 Confidential or Confidential-Attorneys’ Eyes Only material or discussing or referencing such  
23

24     Stipulated Protective Order - 5  
25     Case No. 2:17-cv-01935-RAJ

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1 material in court filings, the filing party shall confer with the designating party, in accordance with  
2 Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the  
3 confidential designation, whether the document can be redacted, or whether a motion to seal or  
4 stipulation and proposed order is warranted. During the meet and confer process, the designating  
5 party must identify the basis for sealing the specific confidential information at issue, and the filing  
6 party shall include this basis in its motion to seal, along with any objection to sealing the  
7 information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
8 standards that will be applied when a party seeks permission from the court to file material under  
9 seal. A party who seeks to maintain the confidentiality of its information must satisfy the  
10 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.  
11 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with  
12 the strong presumption of public access to the Court's files.  
13

14  
15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
17 or non-party that designates information or items for protection under this agreement must take  
18 care to limit any such designation to specific material that qualifies under the appropriate  
19 standards. The designating party must designate for protection only those parts of material,  
20 documents, items, or oral or written communications that qualify, so that other portions of the  
21 material, documents, items, or communications for which protection is not warranted are not swept  
22 unjustifiably within the ambit of this agreement.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
24 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to

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unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains such sensitive material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as Confidential or Confidential – Attorneys' eyes Only. If a party or non-party desires to protect such sensitive information at trial, the issue should be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place  
2 on the exterior of the container or containers in which the information or item is stored the word  
3 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or  
4 portions of the information or item warrant protection, the producing party, to the extent  
5 practicable, shall identify the protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
7 designate qualified information or items does not, standing alone, waive the designating party’s  
8 right to secure protection under this agreement for such material. Upon timely correction of a  
9 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
10 in accordance with the provisions of this agreement.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
13 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
14 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
15 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
16 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
17 original designation is disclosed.

18 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
19 regarding designations without court involvement. Any motion regarding designations or for a  
20 protective order must include a certification, in the motion or in a declaration or affidavit, that the  
21 movant has engaged in a good faith meet and confer conference with other affected parties in an  
22 effort to resolve the dispute without court action. The certification must list the date, manner, and  
23 participants to the conference. A good faith effort to confer requires a face-to-face meeting or a  
24 telephone conference.



1           6.3    Judicial Intervention. If the parties cannot resolve a challenge without court  
2 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
3 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
4 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
5 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
6 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
7 the material in question as confidential until the court rules on the challenge.

8   7.       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
9 LITIGATION

10           If a party is served with a subpoena or a court order issued in other litigation that compels  
11 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
12 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that party must:

13                   (a)     promptly notify the designating party in writing and include a copy of the  
14 subpoena or court order;

15                   (b)     promptly notify in writing the party who caused the subpoena or order to  
16 issue in the other litigation that some or all of the material covered by the subpoena or order is  
17 subject to this agreement. Such notification shall include a copy of this agreement; and

18                   (c)     cooperate with respect to all reasonable procedures sought to be pursued by  
19 the designating party whose material may be affected.

20   8.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21           If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
22 material to any person or in any circumstance not authorized under this agreement, the receiving  
23 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
24 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the

1 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
2 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
3 Bound” that is attached hereto as Exhibit A.

4 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
5 MATERIAL

6 When a producing party gives notice to receiving parties that certain inadvertently  
7 produced material is subject to a claim of privilege or other protection, the obligations of the  
8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
9 is not intended to modify whatever procedure may be established in an e-discovery order or  
10 agreement that provides for production without prior privilege review. The parties agree to the  
11 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

12 10. TERMINATION AND RETURN OF DOCUMENTS

13 Within 60 days after the termination of this action, including all appeals, each receiving  
14 party must return all confidential material to the producing party, including all copies, extracts and  
15 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
19 product, even if such materials contain confidential material.

20 11. EVIDENTIARY EFFECT

21 The fact that a party has designated information as “CONFIDENTIAL” or “CONFIDENTIAL –  
22 ATTORNEYS EYES ONLY” shall have no evidentiary effect in this action and may not be  
23 commented upon by any party for any purpose before the jury except to advise that the information  
24 is designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY”.

25 Stipulated Protective Order - 10  
26 Case No. 2:17-cv-01935-RAJ

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1 The confidentiality obligations imposed by this agreement shall remain in effect until a  
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4  
5 DATED: January 30, 2019

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Attorneys for Defendants

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: \_\_\_\_\_

\_\_\_\_\_  
[Name of Judge]  
United States District Court Judge

[Proposed] Order Re: Stipulated  
Protective Order  
Case No. 2:17-cv-01935-RAJ

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1  
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of  
6 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
7 issued by the United States District Court for the Western District of Washington on [date] in the  
8 case of \_\_\_\_\_ **[insert formal name of the case and the number and initials**  
9 **assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this  
10 Stipulated Protective Order and I understand and acknowledge that failure to so comply could  
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will  
12 not disclose in any manner any information or item that is subject to this Stipulated Protective  
13 Order to any person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.

17 Date: \_\_\_\_\_

18 City and State where sworn and signed: \_\_\_\_\_

19 Printed name: \_\_\_\_\_

20 Signature: \_\_\_\_\_  
21  
22  
23  
24  
25

26 Exhibit A to Stipulated Protective Order  
Case No. 2:17-cv-01935-RAJ

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**CERTIFICATE OF SERVICE:**

CASE NAME: DIGITAL MENTOR, INC. vs. OVIVO USA, LLC, et al.

CASE NUMBER: US DISTRICT COURT - WESTERN DISTRICT OF  
WASHINGTON

Case No.: 2:17-cv-01935-RAJ

I hereby certify that on the 30<sup>th</sup> day of January 2019, I caused to be served the document  
below on the following parties at the following addresses:

• **STIPULATED PROTECTIVE ORDER**

on the following person(s) in this action:

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*Attorneys for Defendants*

- VIA electronic service through US District Court Western District of Washington's Electronic Case Filing System ("ECF").

s/Linda Keny\_\_\_\_\_

Linda Keny

Certificate of Service  
Case No. 2:17-cv-01935-RAJ

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